

**BEFORE THE TENNESSEE REGULATORY AUTHORITY**

**RECEIVED**

2005 DEC -2 PM 1:47

In Re: Petition of MCImetro Access )  
Transmission Services, LLC for )  
Arbitration of Certain Terms and )  
Conditions of Proposed Agreement )  
with BellSouth Telecommunications, )  
Inc. Concerning Interconnection and )  
Resale under the )  
Telecommunications Act of 1996 )  
\_\_\_\_\_ )

Docket No. 05-00231

T.R.A. DOCKET ROOM

Filed: December 2, 2005

**MCI'S BRIEF IN OPPOSITION TO BELL SOUTH'S MOTION TO DISMISS OR  
MOVE ARBITRATION ISSUES**

MCImetro Access Transmission Services, LLC ("MCI") files this brief in opposition to the Motion to Dismiss or Move Arbitration Issues submitted by BellSouth Telecommunications, Inc. ("BellSouth").

**I. INTRODUCTION**

BellSouth seeks to remove three issues from this case relating to Voice over Internet Protocol ("VoIP") traffic on the grounds that the FCC purportedly has asserted exclusive jurisdiction with respect to all VoIP issues and preempted states from addressing VoIP issues. BellSouth's motion should be denied for two reasons. First, because BellSouth voluntarily negotiated these issues during the section 251 process, they are subject to compulsory arbitration under the Telecommunications Act of 1996 (the "Act"). Under federal law, the Authority must decide these issues in this arbitration. Second, BellSouth is simply wrong when it contends that the FCC in the *Vonage*

*Declaratory Ruling*<sup>1</sup> prevented state commissions from addressing all VoIP issues. The FCC selectively has asserted preemption only with respect to particular state regulation of certain VoIP services, but has not prevented states from establishing intercarrier compensation rates relating to VoIP traffic carried over telecommunications carriers' interconnection trunks. Here, unlike the circumstances in the *Vonage Declaratory Ruling*, state rulings can be made in a manner that will not conflict with any federal law or policy.

The Authority should deny BellSouth's motion to dismiss and resolve the intercarrier compensation VoIP issues in this case in a manner that is consistent with FCC rulings and policy. If and when the FCC establishes intercarrier compensation rules, the parties may incorporate them through the change of law process in their interconnection agreement.<sup>2</sup>

## II. BACKGROUND

### A. The Parties' Negotiations

The parties negotiated extensively concerning VoIP provisions of the interconnection agreement. The subject was discussed at length during at least ten section 251 negotiation sessions from mid-2004 to the time the arbitration petition was filed in 2005.<sup>3</sup> In some areas, the parties reached agreement. They agreed that

---

<sup>1</sup> *Vonage Holdings Corp. Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission*, WC Docket No. 03-211, Memorandum Opinion and Order, FCC 04-267 (rel. Nov. 12, 2004).

<sup>2</sup> BellSouth also has requested that Issue 11 be moved to Docket 04-0381. MCI does not oppose moving the two subissues described in BellSouth's motion to Docket 04-0381 and adopting the Authority's rulings on those subissues in this case. Issue 11 includes an additional subissue not referenced in BellSouth's motion, however, so Issue 11 should remain open and that subissue should be addressed in this case.

<sup>3</sup> Affidavit of Kathy J. Jespersen ("Jespersen Aff."), ¶ 7.

“IP/PSTN Traffic”<sup>4</sup> must involve a net protocol conversion between the calling and called parties (such as traffic that originates in IP format and terminates in traditional voice format). They also agreed to define “PSTN/IP/PSTN Traffic” as not including IP/PSTN Traffic, but still featuring “enhanced services that provide customers a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information.”<sup>5</sup> BellSouth and MCI also successfully negotiated language for the routing of VoIP traffic.<sup>6</sup>

The parties did not reach agreement on VoIP intercarrier compensation issues. Specifically, they did not agree on whether VoIP traffic should be excluded from the definition of intraLATA toll traffic (Issue 18); what intercarrier compensation regime should be applied to such traffic (Issue 19); and how such traffic should be categorized for purposes of compensation for interconnection facilities and traffic termination (Issue 23). BellSouth asserts that VoIP traffic should be treated as if it were traditional voice traffic. MCI, in contrast, takes the position that VoIP traffic should be handled in much the same manner as ISP-bound traffic, for which FCC rules are already in place.<sup>7</sup> BellSouth’s statement that “MCI requests that the TRA affirmatively find that all such [VoIP] traffic is local and thus subject to reciprocal compensation charges”<sup>8</sup> thus flatly misstates MCI’s position. Although BellSouth now seeks to dismiss Issues 18, 19 and 23 from this case, it negotiated these issues with MCI without even suggesting that VoIP was not a proper subject of the interconnection agreement.<sup>9</sup>

---

<sup>4</sup> “IP” stands for “Internet Protocol,” while “PSTN” is short for “Public Switched Telephone Network.”

<sup>5</sup> Unless the context indicates otherwise, references to “VoIP” below refer to IP/PSTN and PSTN/IP/PSTN traffic.

<sup>6</sup> Jespersen Aff. ¶¶ 5, 6, 8.

<sup>7</sup> The language in dispute is shown in Appendix A to the Jespersen Affidavit being filed with this brief.

<sup>8</sup> BellSouth Motion, p. 2.

<sup>9</sup> Jespersen Aff. ¶ 9.

B. The FCC's 2004 VoIP Rulings

In 2004 the FCC issued three rulings that began to define the contours of how VoIP may and may not be regulated. In these decisions the FCC addressed carefully selected issues, leaving many other VoIP issues for later determination. In the *Pulver Declaratory Ruling*,<sup>10</sup> the FCC held that pulver.com's Free World Dialup ("FWD") service was an information service, not telecommunications or a telecommunications service. FWD facilitated VoIP communication by providing information about which FWD members are on line and their current Internet address, and by providing voice mail, conference bridging and Internet address repair services.<sup>11</sup> Members were required to have an existing broadband connection and acquire and configure Session Initiation Protocol ("SIP") phones or download software to enable their computers to be used as "soft phones." Once so equipped, members could use portable five- or six-digit FWD numbers to make free VoIP calls to other FWD members from any broadband accessible location.<sup>12</sup>

The FCC held that FWD did not constitute "telecommunications" because Pulver did not provide or offer transmission to its members, and in any case provided new information to members (such as whether other members are on line and how they may be reached), as opposed to transmitting users' information from Point A to Point B with no change in form or content.<sup>13</sup> Likewise, the FCC concluded that FWD was not a

---

<sup>10</sup> *Petition for Declaratory Ruling that pulver.com's Free World Dialup is Neither Telecommunications Nor a Telecommunications Service*, WC Docket No. 03-45, Memorandum Opinion and Order, FCC 04-27 (rel. Feb. 19, 2004)

<sup>11</sup> *Id.* at ¶ 6.

<sup>12</sup> *Id.* at ¶ 5.

<sup>13</sup> *Id.* at ¶ 9.

telecommunications service because Pulver was not offering telecommunications and was not assessing a fee.<sup>14</sup> The FCC ruled instead that FWD was an information service because it offered “a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications.” The FCC went on to conclude that FWD was an unregulated information service subject to the FCC’s jurisdiction and that “any state regulations that seek to treat FWD as a telecommunications service or otherwise subject it to public-utility type regulation would almost certainly pose a conflict with our policy of nonregulation.”<sup>15</sup> The FCC did not address, or prevent states from addressing, intercarrier compensation for telecommunications carriers transporting the VoIP traffic enabled by services such as FWD.

The FCC next issued the *AT&T Declaratory Ruling*,<sup>16</sup> in which it addressed AT&T’s request that its VoIP service should be exempt from access charges. A customer using AT&T’s interexchange service dialed 1 plus the telephone number from a regular phone using the public switched telephone network (“PSTN”). After reaching AT&T’s network, the call was converted to IP format, transported over AT&T’s Internet backbone, then converted back from IP format and terminated on the PSTN.<sup>17</sup> The FCC ruled that AT&T’s service was a telecommunications service because it provided transmission of the user’s information without changing its form or content (and thus qualified as “telecommunications”), and offered its service for a fee directly to the

---

<sup>14</sup> *Id.* at ¶ 11

<sup>15</sup> *Id.* at ¶ 15.

<sup>16</sup> *Petition for Declaratory Ruling that AT&T’s Phone-to-Phone IP Telephony Services are Exempt from Access Charges*, WC Docket No. 02-361, Order, FCC 04-97 (rel. April 21, 2004)

<sup>17</sup> *Id.* at ¶ 1.

public.<sup>18</sup> The FCC concluded that AT&T's VoIP traffic was subject to access charges because it provided the same functionality to customers and imposed the same burdens on local exchange carriers as circuit-switched interexchange calls.<sup>19</sup> The FCC emphasized that its decision was based on the features of AT&T's interexchange service that

(1) uses ordinary customer premises equipment (CPE) with no enhanced functionality; (2) originates and terminates on the public switched telephone network (PSTN); and (3) undergoes no net protocol conversion and provides no enhanced functionality to end users due to the provider's use of IP technology.<sup>20</sup>

The parties have defined "PSTN/IP/PSTN" to exclude the kind of "IP-in-the-middle" traffic provided by AT&T, by requiring that some enhanced service be featured. The *AT&T Declaratory Ruling* was limited to the "IP-in-the-middle" traffic that is not at issue in this case, and did not address intercarrier compensation for IP/PSTN or PSTN/IP/PSTN traffic as the parties have defined those terms.<sup>21</sup>

Finally, the FCC issued the *Vonage Declaratory Ruling*, in which it addressed whether the Minnesota Public Utilities Commission could compel Vonage Holdings Corporation ("Vonage") to comply with state laws and regulations requiring telephone companies to obtain operating authority, file tariffs and provide and fund 911 emergency services. Like the FWD service at issue in the *Pulver Declaratory Ruling*, the Vonage service required customers to obtain their own broadband connection and specialized customer premises equipment.<sup>22</sup> The Vonage service also provided customers with a

---

<sup>18</sup> *Id.* at ¶ 12.

<sup>19</sup> *Id.* at ¶ 15.

<sup>20</sup> *Id.* at ¶ 1.

<sup>21</sup> As previously noted, the parties have agreed to define PSTN/IP/PSTN traffic so that enhanced services must be provided, thus excluding the type of VoIP traffic in the *AT&T Declaratory Ruling*.

<sup>22</sup> *Id.* at ¶¶ 5-6.

suite of integrated features such as voicemail, online account and voicemail management, and the ability to use the service anywhere they could obtain broadband access.<sup>23</sup> Unlike the FWD service, the Vonage service used North American Numbering Plan telephone numbers and permitted customer to send calls to and receive calls from parties who were not Vonage customers, including parties served by the PSTN.<sup>24</sup> The FCC did not reach the question of whether Vonage provided a telecommunications or an information service, but nonetheless concluded that Minnesota's order was preempted, among other reasons because of the impossibility of separating Vonage's service into intrastate and interstate communications for the purpose of implementing a dual regulatory regime, and because permitting Minnesota to apply the regulations in question "would thwart federal law and policy."<sup>25</sup>

The *Vonage Declaratory Ruling* was limited to addressing whether the Minnesota commission could impose its regulations requiring Vonage to obtain operating authority, file tariffs and provide and fund 911 emergency services – all of which would have impaired Vonage's service or delayed or even prevented its entry into business. Thus, the FCC concluded its order by stating that the "the Minnesota Commission may not require Vonage to comply with its certification, tariffing or other related requirements as conditions to offering DigitalVoice in that state."<sup>26</sup> The FCC did not preempt state regulation (at least not yet, and certainly not as to section 252 arbitrations) of intercarrier compensation for the exchange of VoIP traffic between telecommunications carriers. In

---

<sup>23</sup> *Id.* at ¶ 7

<sup>24</sup> *Id.* at ¶¶ 8-9.

<sup>25</sup> *Id.* at ¶ 14.

<sup>26</sup> *Id.* at ¶ 46.

noting that it intended to address a number of other issues in its *IP-Enabled Services Proceeding*,<sup>27</sup> the FCC stated:

That proceeding will resolve important regulatory matters with respect to IP-enabled services generally, including services such as DigitalVoice, concerning issues such as the Universal Service Fund, intercarrier compensation, 911/E911, consumer protection, disability access requirements, *and the extent to which states have a role in such matters*. . . . By ruling on the narrow jurisdictional question here, we enable this Commission *and the states* to focus resources in working together along with the industry to address the numerous other unresolved issues related to this and other IP-enabled and advanced communications services that are of paramount importance to the future of the communications industry.<sup>28</sup>

Thus, the FCC expressly left open the possibility that states will have a continuing role in determining VoIP rules even after the FCC issues its order in the *IP-Enabled Services Proceeding*. Moreover, this passage makes clear that the FCC has not yet ruled on what intercarrier compensation rules apply to VoIP traffic and has not preempted the states from fashioning such rules.

### III. ARGUMENT

#### A. By Negotiating VoIP Issues, BellSouth Has Voluntarily Made Them Subject to Arbitration

Section 251(b)(5) does impose the duty of reciprocal compensation, and thus it is entirely appropriate to negotiate and arbitrate these issues under section 252. And, in any event, under the arbitration procedures of the Act, the parties may voluntarily negotiate

---

<sup>27</sup> *IP-Enabled Services*, WC Docket No. 04-36, Notice of Proposed Rulemaking, 19 FCC Rcd 4863 (2004).  
<sup>28</sup> *Vonage Declaratory Ruling*, ¶ 14, n.46 (emphasis added).



issues that do not relate to the duties of the parties set forth in section 251.<sup>29</sup> The Act further provides:

During the period from the 135<sup>th</sup> to the 160<sup>th</sup> day (inclusive) after the date on which an incumbent local exchange carrier receives a request for negotiation under this section, the carrier or any other party to the negotiation may petition a State commission to arbitrate any open issue.<sup>30</sup>

State commissions “shall resolve each issue set forth in the petition and the response, if any, by imposing appropriate conditions as required to implement subsection (c) upon the parties to the agreement.”<sup>31</sup> As the Fifth Circuit held in the *Coserv* case,<sup>32</sup> such issues that state commissions are required to resolve include open issues not relating to section 251 duties that the parties voluntarily choose to negotiate. As the court stated:

There is nothing in § 252(b)(1) limiting open issues only to those listed in § 251(b) and (c). By including an open-ended voluntary negotiations provision in § 252(a)(1), Congress clearly contemplated that the sophisticated telecommunications carriers subject to the Act might choose to include other issues in their voluntary negotiations, and to link issues of reciprocal interconnection together under the § 252 framework. In combining these voluntary negotiations with a compulsory arbitration provision in § 252(b)(1), Congress knew that these non-§ 251 issues might be subject to compulsory arbitration if negotiations fail. That is, Congress contemplated that voluntary negotiations might include issues other than those listed in § 251(b) and (c) and still provided that any issue left open after unsuccessful negotiation would be subject to arbitration by the PUC.<sup>33</sup>

---

<sup>29</sup> 47 U.S.C. § 252(a)(1).

<sup>30</sup> 47 U.S.C. § 252(b).

<sup>31</sup> 47 U.S.C. § 252(b)(4)(c).

<sup>32</sup> *Coserve Ltd v Southwestern Bell Tel Co*, 350 F.3d 482 (5<sup>th</sup> Cir. 2003).

<sup>33</sup> *Id.* at 487.

The Fifth Circuit therefore held that “where the parties have voluntarily included in negotiations issues other than those duties required of an ILEC by § 251(b) and (c), those issues are subject to compulsory arbitration under § 252(b)(1).<sup>34</sup>

Although BellSouth does not refer to the parties’ negotiations in its motion, in fact the parties have negotiated at length concerning the VoIP issues BellSouth now seeks to dismiss. As a result, even if BellSouth had no duties under section 251 (b) and (c) relating to the exchange of VoIP traffic (which is not the case<sup>35</sup>), BellSouth still would be obligated to arbitrate the parties’ open VoIP issues. The Authority not only is authorized to decide these open issues, but it is required by the Act to do so. Because the FCC has not addressed these issues, it will be possible for the Authority to decide them without impeding or conflicting with any FCC rule or policy. Further, if the FCC eventually reaches a conclusion that differs from that of the Authority, the parties will be free to incorporate the FCC’s decision through the agreement’s change of law process.

B. The FCC Has Not Preempted States from Determining Inter-carrier Compensation Rates for VoIP Traffic Exchanged Between Telecommunications Carriers

The *Vonage Declaratory Ruling* did not preempt the Authority from addressing VoIP intercarrier compensation issues between telecommunications carriers. The FCC in that decision only dealt with whether certain state regulations (in particular, certification, tariffing and 911 requirements) should be preempted that could substantially impair,

---

<sup>34</sup> *Id*

<sup>35</sup> As noted, BellSouth does have a duty to negotiate reciprocal compensation under section 251(b)(5). Moreover, nothing in the *Vonage Declaratory Ruling* suggests that interconnection agreements should not contain intercarrier compensation rates terms and conditions for VoIP traffic transported over carriers’ interconnection trunks. Even if the FCC establishes such terms and conditions, they should be incorporated into the agreement, as the parties have done, for example, with the rates, terms and conditions established by the FCC for ISP-bound traffic

delay or even prevent the offering of a nascent VoIP service. The *Vonage Declaratory Ruling* decision did not purport to deal with VoIP intercarrier compensation issues and nowhere stated that it was preempting states from addressing them. To the contrary, the FCC made clear that it planned to address VoIP intercarrier compensation issues, and the extent to which states will have a role in such issues, in the *IP-Enabled Services Proceeding*. The FCC plainly has not ruled out state involvement in VoIP issues, and unless and until it does states are not precluded from addressing VoIP intercarrier compensation issues consistent with federal law.

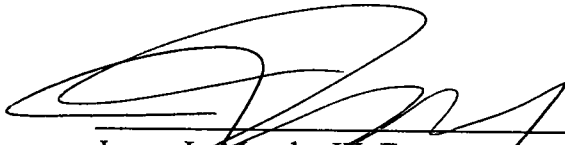
Deciding the intercarrier compensation issues presented here will not conflict with any federal rule or policy. The problem the parties have been attempting to address in their negotiations arises because there must be intercarrier compensation rates, terms and conditions that apply to VoIP traffic, but the FCC has not decided what they should be. Under these circumstances, there is no possibility of a conflict with a federal rule or policy. Moreover, MCI has proposed that the Authority resolve VoIP intercarrier compensation issues by looking to the rates, terms and conditions established by the FCC for ISP-bound traffic, which is analogous to VoIP traffic. That approach would enable the Authority to follow FCC precedent as closely as possible. BellSouth, in contrast, apparently hopes that if no ruling is made, it can impose access charges on VoIP traffic through its tariffs and thus achieve the same result it sought in its negotiations with MCI. BellSouth's attempt to impose an antiquated regulatory regime on VoIP traffic should be rejected, and its motion should be denied.

#### IV. CONCLUSION

BellSouth's motion ignores the parties' negotiations concerning VoIP traffic and mischaracterizes the FCC's *Vonage Declaratory Ruling*. This Authority is required by section 252 of the Act to resolve the VoIP intercarrier compensation issues that have been presented to it in this arbitration, and in any event the FCC has not preempted these compensation issues, even if it may someday do so. BellSouth's motion accordingly should be denied.

Dated: December 2, 2005

Respectfully Submitted,



James L. Murphy III, Esq.  
Boult, Cummings, Conners & Berry PLC  
1600 Division Street, Suite 700  
P.O. Box 340025  
Nashville, Tennessee 37203  
Phone: (615) 252-2303  
Fax: (615) 252-6303  
E-mail: [jmurphy@boultcummings.com](mailto:jmurphy@boultcummings.com)

Dulaney L. O'Roark III, Esq.  
MCI, Inc.  
6 Concourse Parkway, Suite 600  
Atlanta, GA 30328  
Phone: (770) 284-5497  
Fax: (770) 284-5488  
E-mail: [de.oroark@mci.com](mailto:de.oroark@mci.com)

Donna Canzano McNulty, Esq.  
MCI, Inc.  
1203 Governors Square Blvd, Suite 201  
Tallahassee, FL 32301  
Phone: (850) 219-1008  
Fax: (850) 219-1018  
E-mail: [donna.mcnulty@mci.com](mailto:donna.mcnulty@mci.com)

*Attorneys for MCI Communications Services, Inc.  
and MCI metro Access Transmission Services LLC*

## **CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing has been forwarded via U.S. Mail, postage prepaid, to:

Guy Hicks  
333 Commerce Street  
Suite 2101  
Nashville, TN 37201-3300

Consumer Advocate Division  
425 5th Avenue, N., 2nd Floor  
Nashville, TN 37243-0491

on this the 2<sup>nd</sup> day of December, 2005.



---

James E. Murphy III

**BEFORE THE TENNESSEE REGULATORY AUTHORITY**

In Re: Petition of MCImetro Access )  
Transmission Services, LLC for )  
Arbitration of Certain Terms and )  
Conditions of Proposed Agreement )  
with BellSouth Telecommunications, )  
Inc. Concerning Interconnection and )  
Resale under the )  
Telecommunications Act of 1996 )  
\_\_\_\_\_ )

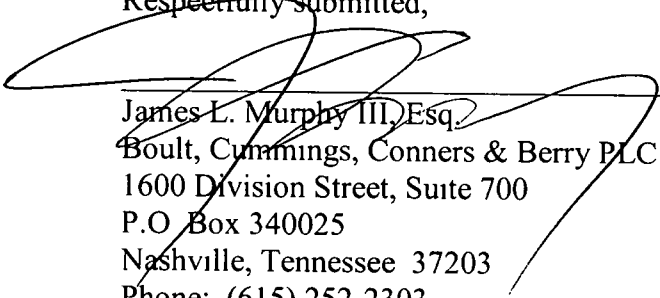
Docket No. 05-00231

Filed: December 2, 2005

**NOTICE OF FILING OF AFFIDAVIT OF KATHY J. JESPERSEN**

Petitioner, MCImetro Access Transmission Services, LLC ("MCI"), gives notice of the filing of the Affidavit of Kathy J. Jespersen in opposition to the Motion to Dismiss or Move Arbitration Issues submitted by BellSouth Telecommunications, Inc.

Respectfully submitted,



James L. Murphy III, Esq.  
Boulton, Cummings, Conners & Berry PLC  
1600 Division Street, Suite 700  
P.O. Box 340025  
Nashville, Tennessee 37203  
Phone: (615) 252-2303  
Fax: (615) 252-6303  
E-mail: [jmurphy@boultoncummings.com](mailto:jmurphy@boultoncummings.com)

Dulaney L. O'Roark III, Esq.  
MCI, Inc.  
6 Concourse Parkway, Suite 600  
Atlanta, GA 30328  
Phone: (770) 284-5497  
Fax: (770) 284-5488  
E-mail: [de.oroark@mci.com](mailto:de.oroark@mci.com)

Donna Canzano McNulty, Esq.  
MCI, Inc.  
1203 Governors Square Blvd, Suite 201  
Tallahassee, FL 32301  
Phone: (850) 219-1008  
Fax: (850) 219-1018  
E-mail: [donna.mculty@mci.com](mailto:donna.mculty@mci.com)

*Attorneys for MCI*

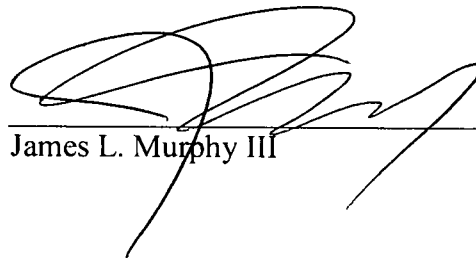
## CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been forwarded via U.S. Mail, postage prepaid, to:

Guy Hicks  
333 Commerce Street  
Suite 2101  
Nashville, TN 37201-3300

Consumer Advocate Division  
425 5th Avenue, N , 2nd Floor  
Nashville, TN 37243-0491

on this the 2<sup>nd</sup> day of December, 2005.



---

James L. Murphy III



**BEFORE THE TENNESSEE REGULATORY AUTHORITY**

In Re: Petition of MCImetro Access )  
Transmission Services, LLC for )  
Arbitration of Certain Terms and )  
Conditions of Proposed Agreement )  
with BellSouth Telecommunications,) )  
Inc. Concerning Interconnection and )  
Resale under the )  
Telecommunications Act of 1996 )  
\_\_\_\_\_ )

Docket No.

Filed: August 15, 2005

**AFFIDAVIT OF KATHY J. JESPERSEN**

I, Kathy J. Jespersen, on oath state the following on my knowledge:

1. I am at least 18 years of age and I am under no disabilities that disqualify me from making an affidavit.
2. I am employed by MCI as the Senior Manager, Carrier Agreements – East.
3. One of my areas of responsibility is the negotiation of interconnection agreements with BellSouth Telecommunications, Inc on behalf of MCImetro Access Transmission Services, L.L.C. In this capacity, my staff and I negotiated the interconnection agreement with BellSouth that is the subject of this case (the “ICA”).
4. One of the topics of negotiations for the ICA was the proper classification, jurisdictionalization, routing, and intercarrier compensation of IP-enabled services.
5. BellSouth and MCI willingly and successfully negotiated definitions of terms to describe various types of IP-enabled services. The terms used (i.e., IP/PSTN and PSTN/IP/PSTN) were specifically chosen by BellSouth.

6. BellSouth and MCI willingly and successfully negotiated language for the routing of these various types of IP-enabled services.
7. The parties spent several hours during at least ten (10) sessions, which took place beginning in mid-2004 through the filing of the Petition, negotiating the intercarrier compensation and jurisdictionalization of IP-enabled services, but the negotiations were not successful.
8. The agreed to and disputed language regarding IP-enabled services is shown in Appendix A to this Affidavit, which is attached and incorporated by reference.
9. At no point during the negotiations described in Paragraph 7 above did BellSouth refuse to discuss IP-enabled services, nor did BellSouth ever indicate to MCI that IP-enabled services were not a proper subject of the ICA.

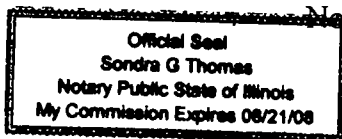
Kathy J. Jespersen  
Kathy J. Jespersen

State of Illinois

County of Cook

The above-named Kathy J. Jespersen appeared before me and swore to and subscribed to the foregoing on the 29<sup>th</sup> day of November, 2005.

Sandra G. Thomas  
Notary Public



My commission expires \_\_\_\_\_

## Appendix A to Affidavit of Kathy J. Jespersen

Language agreed to by both BellSouth and MCI (from Attachment 3 of the ICA):

1 The Parties shall interconnect their networks for the mutual exchange of telephone exchange service traffic (including Local Traffic), Exchange Access Traffic, ISP Bound Traffic, IP Enabled Services traffic, and Transit Traffic

**2.18 IP/PSTN Traffic** is a subset of IP Enabled Services that undergoes a Net Protocol Conversion as defined herein, between the calling and called parties ,

**2.19 PSTN/IP/PSTN Traffic** is a subset of IP Enabled Services that is not IP/PSTN Traffic and that features enhanced services that provide customers a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information

7.9 1 1 The following category of IP Enabled Services that are neither IP/PSTN nor PSTN/IP/PSTN traffic is also considered Switched Access Traffic as set forth in this agreement. interLATA calls that (1) use ordinary customer premises equipment (such as a traditional telephone) with no enhanced functionality, (2) originate and terminate on the public switched telephone network (PSTN); (3) undergo no Net Protocol Conversion as defined herein, and (4) provide no enhanced functionality to End Users that result from the provider's use of IP technology To the extent that the FCC finds that this type of IP Enabled Services is not exchange access service, or is not otherwise subject to access charges, then the Parties shall amend the Agreement in accordance with Section 12.3 of the General Terms and Conditions

Language with disputed terms (bold italics language is sponsored by MCI, bold underlined language is sponsored by BellSouth):

4 10 For two-way trunk groups that carry both Parties' Local Traffic, ***IP/PSTN traffic, PSTN/IP/PSTN traffic***, and ISP-bound Traffic only, **the Parties shall be initially compensated at 50% of the nonrecurring and recurring rates for dedicated DS1 facilities** *each Party shall pay its proportionate share of the nonrecurring and recurring charges for interconnection facilities based on the percentage of the facilities used by that Party. Each Party shall pay its proportionate share of the nonrecurring charges for new and augmented facilities based on the joint forecasts for the circuits required by each Party.* Semiannually either Party can request a joint review of traffic statistics for the previous six (6) months on a per trunk group basis. Either Party can request a billing adjustment of the **50-50 previous** split to reflect the proportionate level of traffic. MCI shall be responsible for ordering and paying for any two-way trunks carrying Transit Traffic. Each Party shall be responsible for ordering and paying for facilities used for two-way trunk groups it utilizes unidirectionally.

7.2.1 "IntraLATA Toll Traffic" is defined as all traffic that originates and terminates within a single LATA that is not Local, Transit, **IP/PSTN traffic and PSTN/IP/PSTN** or ISP-bound traffic under this Attachment

*7.5.1 The Parties shall compensate each other for the exchange of IP/PSTN traffic and PSTN/IP/PSTN Traffic applying the same rate elements used by the Parties for the exchange of ISP-bound traffic whose dialing patterns would otherwise indicate the traffic is local traffic. This compensation regime for IP/PSTN and PSTN/IP/PSTN Traffic shall apply regardless of the locations of the calling and called parties, and regardless of the originating and terminating NPA/NXXs.*

**7.6.3 Percent Local Facility.** Each Party shall report to the other a Percent Local Facility (PLF) factor. The application of the PLF factor will determine the portion of switched dedicated transport to be billed per the rates set forth in Exhibit A to this Attachment. The PLF factor shall be applied to Multiplexing, Local Channel and Interoffice Channel Switched Dedicated Transport utilized in the provision of Switched Dedicated Transport. Each Party shall update its PLF factor on the first of January, April, July and October of the year and shall send it to the other Party to be received no later than thirty (30) days after the first of each such month to be effective the first bill period the following month, respectively. If the PLF factor is not timely updated, the previously reported PLF factor will be used. Requirements associated with PLF factor calculation and reporting shall be as set forth in Exhibit xx to this Attachment. For purposes of the PLF factor calculation, the following traffic types shall be included: Exchange Access Traffic originated by or terminated to a 3<sup>rd</sup> party IXC (including an MCI affiliate with a separate ACNA), Local Traffic; ISP-Bound Traffic; **IP/PSTN Traffic; PSTN/IP/PSTN Traffic**

*7.6.4 In addition to other jurisdictional factors the Parties may report to one another under this Agreement, the Parties shall report a Percent Enhanced Usage ("PEU") factor on a statewide basis or as otherwise determined by MCI at its sole discretion. The numerator of the PEU factor shall be the number of minutes of IP/PSTN Traffic and PSTN/IP/PSTN traffic sent to the other Party for termination to such other Party's customers. The denominator of the PEU factor shall be the total combined number of minutes of traffic, including IP/PSTN Traffic and PSTN/IP/PSTN traffic, sent over the same trunks as IP/PSTN Traffic and PSTN/IP/PSTN traffic. Either Party may audit the other Party's PEU factors pursuant to the audit provisions of this Agreement. Requirements associated with PEU factor calculation and reporting shall be as set forth in Exhibit xx to this Attachment.*

**7.6.5 Notwithstanding the provisions regarding the calculation of PLU and PIU above, where the terminating Party has message recording technology that identifies the jurisdiction of traffic terminated, utilizing originating and terminating NPA/NXXs, as defined in this Agreement, such information shall, at the terminating Party's option, be utilized to determine the appropriate jurisdictional reporting factors (the PLU & PIU) but not the PEU or PLF, in lieu of those provided by the originating Party. In the event that the terminating Party opts to utilize its own data to determine jurisdictional reporting factors, such terminating Party shall notify the originating Party at least fifteen (15) days prior to the beginning of the calendar quarter in which the terminating Party will begin to utilize its own data. Disputes regarding the calculation of such factors shall be subject to the Billing Dispute Resolution and Audit provisions set forth in this Agreement. If a Party uses its own data to jurisdictionalize traffic, such Party only shall jurisdictionalize traffic to the extent such Party has access to the actual originating and terminating NPA/NXXs, and only to the extent such Party is using the actual originating and terminating NPA/NXXs. The reported jurisdictional factors shall be used for all**

**traffic for which originating and terminating NPA/NXXs are not available. A Party reporting jurisdictional factors may choose to report separate factors for traffic for which NPA/NXXs are not available to be used in such instances.**

- 7.7 Audits.** On thirty (30) days written notice, each Party must provide the other the ability and opportunity to conduct an annual audit to ensure the proper billing of traffic. BellSouth and MCI shall retain records of call detail for a minimum of twelve months from which the PLU, PLF, *PEU* and/or PIU jurisdictionalization can be ascertained. The audit shall be conducted during normal business hours at an office designated by the Party being audited. Audit requests shall not be submitted more frequently than one (1) time per calendar year. Audits shall be performed by a mutually acceptable independent auditor paid for by the Party requesting the audit. The PLU, PLF, *PEU* and/or PIU shall be adjusted based upon the audit results and shall apply to the period of time for which the audit was completed. If, as a result of an audit, either Party is found to have overstated the PLU, PLF, *PEU* and/or PIU, or to have incorrectly jurisdictionalized traffic (in the case of the billing party) by twenty percentage points (20%) or more, that Party shall reimburse the auditing Party for the cost of the audit.